UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

PARAMOUNT PARKS, INC. d/b/a
STAR TREK: THE EXPERIENCE

Employer

and **Case 28-RD-817**

JARED MELSON, Employee

Petitioner

and

LOCAL JOINT EXECUTIVE BOARD OF
LAS VEGAS, CULINARY WORKERS UNION,
LOCAL 226, AND BARTENDERS UNION LOCAL 165,
affiliated with HOTEL AND RESTAURANT
EMPLOYEES INTERNATIONAL UNION, AFL-CIO[1]

Union

SUPPLEMENTAL DECISION AND ORDER

Pursuant to the Board's Decision on Review and Order Remanding, the undersigned issues this Supplemental Decision and Order in the above matter. The issue presented is whether the decertification petition filed in this matter should be dismissed. Addressing the five areas of analysis described by the Board in its Order Remanding, I adhere to the original determination that the decertification petition be dismissed because of the lingering impact of substantial unfair labor practices in two closely-aligned units.

[1] The correct local number of the Bartenders Local is 165, not 125 as previously reported.

Factual Background

Paramount Parks, Inc. d/b/a Star Trek: The Experience (the Employer) operates an amusement ride, retails shops and a restaurant based on the Star Trek theme within the Las Vegas Hilton Hotel and Casino in Las Vegas, Nevada. On August 12, 1998,[2] the Employer recognized Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Local 165, affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO (the Union), as the exclusive collective-bargaining representative of its food and beverage workers.

Employee Tania Lonkouski (Lonkouski) was an observer at the card count held on August 12. On September 22, Lonkouski gave a two-week notice that she was resigning her employment with the Employer. About one week later, she requested to rescind this resignation. The Employer denied this request, and Lonkouski's employment with the Employer ended on October 2. On that day she brought to work to share with her fellow employees a cake decorated with a Union authorization card and the words "Goodbye Norma Rae."[3] The Employer required Lonkouski to smear the frosting on the cake or throw it away based on the way it was decorated. When Lonkouski refused, the Employer confiscated the cake.

Procedural Background

The Union filed unfair labor practice charges in Cases 28-CA-15464 and 28-CA-15464-2, on October 2 and 16, respectively, alleging that the treatment of Lonkouski as described above and other conduct by the Employer violated the Act. A Complaint and Notice of Hearing issued in Case 28-CA-15464 on December 23.

[2] All dates are in 1998, unless otherwise noted.
[3] Norma Rae refers to the movie of the same name starring Sally Field as a union activist. Lonkouski's co-workers gave her this nickname because of her support for the Union.

In the later part of 1998, Professional, Clerical and Miscellaneous Employees, Local Union 995, affiliated with International Brotherhood of Teamsters, AFL-CIO (the Teamsters Union), began an organizing drive among the actors/attendants working on the Star Trek ride. This organizing drive resulted in the filing of a petition in Case 28-RC-5692, with an election held on December 14, and a rerun election held on March 4, 1999. In both elections, there were determinative challenged ballots.

The Teamsters Union filed unfair labor practice charges in Cases 28-CA-15592 and 28-CA-15926 and three individuals filed unfair labor practice charges in Cases 28-CA-15549, 28-CA-15592-4, and 28-CA-15793 arising out of the Teamsters Union's election campaign. A consolidated complaints issued on February 25, March 31, July 29, and November 30, 1999, setting for hearing the allegations of the charge filed by the Union in Case 28-CA-15464 together with the various other charges filed by the Teamsters Union and the three individuals. The hearing on the objections and challenged ballots arising out of the March 4, 1999 election was consolidated with the hearing in the unfair labor practice cases.

On November 5, 1999, the Petitioner filed the decertification petition in the instant case. On November 8, 1999, an order issued, postponing indefinitely the hearing on the decertification petition, pending disposition of the unfair labor practice charge in Case 28-CA-15464.

The parties litigated the unfair labor practice charges filed by the Union, the Teamsters Union, and the three individuals together with the representation case issues for 11 days between February 1, 2000, and March 16, 2000. The Administrative Law Judge issued his decision on August 28, 2000, finding, among other things, that the Employer violated Section 8(a)(1) and (3) of the Act in refusing to allow Lonkouski to rescind her resignation on

September 30, and violated Section 8(a)(1), (3), and (4) of the Act by suspending and discharging Tracy Jordan (Jordan), a Teamsters Union supporter in the unit of actors/ride attendants. While the cases were pending before the Board on exceptions and cross-exceptions, the Employer and the Teamsters Union entered into a settlement agreement and an agreement to withdraw certain of the Teamsters Union's unfair labor practice charges and petition. The Board permitted these cases involving the Teamsters Union and the Employer to be severed and remanded to the undersigned. This left the Board to consider the unfair labor practice charges filed by the three individuals and the original charge in Case 28-CA-15464 filed by the Union. No exceptions were filed with respect to the cases filed by the individuals, and Counsel for the General Counsel and the Union filed exceptions in Case 28-CA-15464. The Employer filed cross-exceptions. On June 6, 2001, the Board issued its decision involving those remaining cases in *Star Trek: The Experience*, reported at 334 NLRB No. 29 (2001).

The Board's Decision

The Board upheld the Administrative Law Judge's recommendation to dismiss the allegations contained in unfair labor practice Cases 28-CA-15549, 28-CA-15592-4, and 28-CA-15793, filed by the three individuals, but found violations based on the Union's charges in Case 28-CA-15464. It held that the Employer violated Section 8(a)(1) and (3) of the Act by refusing to rescind the resignation of Lonkouski, dated September 22, because of her union activities. The Board reversed the Administrative Law Judge and found that by requiring Lonkouski to smear over the prounion message of her cake to which the Employer objected and that by removing the cake when she declined to do so, the Employer violated Section 8(a)(1) of the Act. The Board adopted the Administrative Law Judge's finding that on various dates between May 2 and August 12, the Employer threatened employees with loss of wages and other

reprisals because of their activities on behalf of the Union. With regard to the Union's exceptions that the Employer violated the Act through certain employee handbook provisions dealing with non-disclosure of information, no-solicitation/no distribution and access to the facility, the Board noted that these were covered by the settlement agreement between the Employer and the Teamsters Union. The Board noted that the Employer would be required, among other things, to advise employees that these handbook rules were no longer maintained and that employees were free to discuss among themselves information concerning wages, hours of work and working conditions. In view of this remedial action, the Board declined to require the Employer to take further action with respect to these allegations. The Employer complied with the Board's Order, and Case 28-CA-15464 closed on November 29, 2001.

The Decision and Order in Case 28-RD-817

On December 28, 2001, the Acting Regional Director issued a Decision and Order in the instant case, in which he determined that the petition should be dismissed based on the effect of the aforementioned unremedied unfair labor practices at that time. Thereafter, on November 15, 2002, the Board issued its Decision on Review and Order Remanding, in which it requested additional explanation of the causal relationship between the unfair labor practices and the filing of the petition.

Standard for Processing Decertification Petitions With Unremedied Unfair Labor Practices

The Board has established certain procedures for processing a decertification petition filed at a time when there are unremedied unfair labor practices. If the unfair labor practices found to have merit include a general refusal to recognize and bargain, the petition will be dismissed on the basis that the unfair labor practices preclude a question concerning representation. If the case involves unfair labor practices other than a general refusal to

recognize and bargain, there must be specific proof of a causal connection between the meritorious unfair labor practices and the subsequent employee disaffection with the incumbent union. *National Labor Relations Board, Casehandling Manual, Part Two, Representation Proceedings 11730*.

The framework for analyzing cases that fall into the second category is set forth in *Master Slack Corp*., 271 NLRB 78, 84 (1984). There are four factors generally used in the analysis: (1) the length of time between the unfair labor practices and the decertification petition; (2) the nature of the employer's illegal acts; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. The Acting Regional Director, when issuing his December 21, 2001, Decision, used a *Master Slack* analysis and determined that the Employer's unfair labor practices tainted the showing of interest and dismissed the petition.

Order Remanding

In its Order Remanding, the Board requested further analysis in terms of the particular facts of this case. The Board specified that the analysis of the facts should include the following: (1) the length of time between the Employer's unfair labor practices and the filing of the petition; (2) that the Employer continued to bargain with the Union for more than one year without committing any additional violations; (3) the number of employees impacted by the unfair labor practices; (4) the potential impact of the unfair labor practices in the actors' separate bargaining unit on employee disaffection from the Union among the food and beverage employees; and (5) the nature and severity of the unfair labor practices.

1. The Length of Time Between the Unfair Labor Practices and the Filing of the Petition

Approximately 11 months passed between the refusal to permit Lonkouski to rescind her resignation and the filling of the decertification petition. Approximately 10 months passed between the suspension and discharge of Jordan in early January 1999, in the actors/ride attendants unit and the filing of the decertification petition. The passage of time is important because it may lessen the effects of the unfair labor practices on the employees. As of November 19, 1999, the date the decertification petition was filed in this matter, active unionists Jordan and Lonkouski had both been terminated and none of the unfair labor practice matters had proceeded to a hearing before an administrative law judge.

Because the unfair labor practices in this case involved two terminations, one in the instant unit and the other in the actors/ride attendants unit, it cannot be dissipated merely by the passage of time. *Penn Tank Lines*, 336 NLRB No. 112 (2001); *D&D Enterprises, Inc.,* 336 NLRB No. 76 (2001); *Williams Enterprises*, 312 NLRB 937, 939 (1993), enfd. 50 F. 3d 1280 (4th Cir. 1995). As the Board stated in *Penn Tank Lines*, supra, slip.op. at 2, an employer's discharge of an active union adherent would likely "have a lasting inhibitive effect on a substantial percentage of the work force" and "remain in [employees] memories for a long time period."

Even where a number of years have lapsed between unfair labor practices and a decertification petition, the petition will likely be dismissed if the unfair labor practices have not been fully remedied. This is so because the expression of support for decertification is considered a byproduct of the employer's unfair labor practices. *United Supermarkets, Inc.*, 287 NLRB 119 (1987). In *Overnite Transportation*, 333 NLRB No.166 (2001), the unfair labor practices had occurred almost four years before the filing of the decertification petitions. The

Board rejected the employer's argument that the unfair labor practices were too remote in time to taint the petitions, finding most significant the fact that the employer had not complied with the Board's Order, and, therefore, the unfair labor practices were in no way dissipated. I conclude that these same principles apply here and the relative closeness in time of the Employer's significant unfair labor practices with the petition no doubt tainted it.

2. The Employer Continued to Bargain Without Committing Additional Violations

While the Employer continued to bargain with the Union after its discharge of Lonkouski, it did not do so in an atmosphere free of unfair labor practices. Two months after the discharge of Lonkouski, it discharged Jordan. By acting as it did to discharge leading union adherents in each of its units of employees, especially of a union adherent such as Lonkouski, known by her co-workers as "Norma Rae" for her strong union activism, the Employer caused a lasting inhibitive effect on the remaining employees.

The Employer's continued bargaining with the Union did not mitigate the effects of its unfair labor practices where the underlying unfair labor practices did not involve a refusal to meet and bargain. Therefore, the Employer's bargaining with the Union did not remedy any unfair labor practices. Given the seriousness of the unremedied unfair labor practices, the Employer's bargaining cannot suffice to cure the taint caused by its unfair labor practices and the obvious impact on the decertification efforts. *Overnite Transportation*, supra, slip.op at 4.

3. The Number of Employees Impacted by the Unfair Labor Practices.

There were some 61 employees in the food and beverage unit at the time of the hearing on the instant petition held December 13, 2001. According to the decertification petition, filed some 23 months before, there were 80 employees in the unit. There is no record

evidence as to the number of employees in the food and beverage unit at the time the Employer discharged Lonkouski and committed its other unfair labor practices.

As to the actors/ride attendants unit, there were approximately 100 eligible voters for the December 14, 1998 election and approximately 85 eligible voters for the March 4, 1999, election.

The unlawful discharges of Lonkouski and Jordan may be presumed to have had a profound impact on other employees. In *D&D Enterprises, Inc*., supra, the Board found that the decertification petition was tainted by the employer's failure to reinstate two employees and their subsequent discharges. The Board found that these unfair labor practices "were of a most serious nature, and their impact on employees would be magnified by the fact that they were unremedied."

4. The Potential Impact of the Unfair Labor Practices in the Actors/Ride Attendants Unit

The unfair labor practices in the actors/ride attendant unit, particularly the discharge of Jordan, would have a tendency to undermine support for the Union among the food and beverage employees. The employees work in the same facility. The restaurant area is adjacent to the promenade area where actors regularly perform their roles. Given their daily contacts, the employees in the food and beverage unit would be aware of the Employer's discharge of a prominent union supporter in the actors/ride attendant unit.

5. The Nature and Severity of the Unfair Labor Practices.

The effect of the unfair labor practices committed here may linger for years. The Employer's illegal acts include the discharge of leading union supporters. In *Penn Tank Lines*, 336 NLRB No. 112 (2001), the Board explained that it is "well settled that an employer's discharge of an active union supporter is exceptionally coercive." Discriminatory discharges

strike at the very heart of the Act. *Penn Tank Lines*, supra; *D & D Enterprises*, supra; *Olson Bodies, Inc.*, 206 NLRB 779, 779 (1975).

Conclusion

Based on the *Master Slack* analysis and the further analysis of the particular facts of this case in conjunction with the factors to be considered on remand, I conclude that employee support for the petition was caused by the Employer's unfair labor practices. In these circumstances, it is appropriate that this petition be dismissed. Accordingly,

IT IS HEREBY ORDERED that the petition in this matter be, and it hereby is, dismissed.[4]

Dated at Phoenix, Arizona, this 10th day of December 2002.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board – Region 28

347-6020-5000
347-6020-5033-7500
393-6061-3300
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[4] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by December 24, 2002. A copy of the request for review should also be served on the Regional Director for Region 28.